LIMITATION OF ACTIONS—AMENDMENTS RESTATING CAUSE OF ACTION—CHANGING FROM REMEDY UNDER FEDERAL ACT TO REMEDY UNDER STATE STATUTE.—The plaintiff's intestate was killed while in the employ of the defendant railway. An action was begun nine months later under the Federal Employers' Liability Act but was withdrawn, and the plaintiff more than twenty-two months after the death of the intestate amended the original complaint to comply with a Virginia statute (Va. Code, 1904, ch. 137, sec. 2903) giving a cause of action for wrongful death, providing that such action was brought within twelve months after the death. The defendant contended that this cause of action had expired since the intestate had died more than twelve months prior to the filing of the amendment. The plaintiff suffered a voluntary nonsuit, and eleven months later filed a new complaint in the same language as the original complaint and amendment. *Held,* (one judge *dissenting*) that the plaintiff could not recover. *Capps v. Atlantic Coast Line Ry.* (1922, N. C.) 111 S. E. 533.

The court held that the amendment alleged a new and independent cause of action, and thus could not relate back to the date of the original petition. This seems unnecessarily harsh on the litigant who is attempting to find the correct remedy. It is usually considered the same cause of action where the amendment is an amplification of the original complaint. *Seaboard Air Line Ry. v. Renn* (1916) 241 U. S. 290, 36 Sup. Ct. 567; *Lammars v. C. G. W. Ry.* (1919) 187 Iowa, 1277, 175 N. W. 311; see (1920) 5 IOWA L. BUL. 275. The instant case can be justified by the provision of the Virginia statute that the time in which an action is pending, after an abatement or dismissal, shall not be counted as part of the period of twelve months. After suffering a nonsuit the plaintiff still had three months in which to bring another action, since only nine months of the statutory period had elapsed before the original action was brought. For the effect of statutes of limitations on amendments changing the cause of action from equity to law, see COMMENTS (1918) 27 YALE LAW JOURNAL, 1053; (1918) 27 *ibid.* 1084.

MALICIOUS PROSECUTION—PROBABLE CAUSE A QUESTION FOR THE JURY.—The defendant instigated a criminal prosecution against the plaintiff for selling obscene and indecent literature contrary to statute. N. Y. Cons. Laws, 1909, ch. 40, sec. 1141. The plaintiff was acquitted, and sued for malicious prosecution. The court left to the jury the question of whether the book was of such a character as to justify a belief that its sale was in violation of the Penal Law. *Held,* (two judges *dissenting*) that the question of probable cause was properly left to the jury. *Halsey v. The Society for the Suppression of Vice* (1922) 234 N. Y. 1, 136 N. E. 219.

Probable cause is generally defined as the existence of a state of facts and circumstances sufficiently strong to induce the ordinary and reasonable man to entertain a belief that the accused is guilty of the crime charged. *Bowen v. Pollard* (1917) 173 N. C. 129, 91 S. E. 711. Logically this is a question for the jury inasmuch as the standard adopted is that of the average reasonable man. For reasons of policy, however, most courts regard it a question of law, or, more accurately, a question of fact to be answered by the court. This view is adopted to prevent prosecutors from being harassed because a jury would be prone to find lack of probable cause after an acquittal. *Ball v. Rawles* (1892) 93 Calif. 222, 28 Pac. 937; *Hess v. Oregon German Baking Co.* (1897) 31 Or. 503, 49 Pac. 803. The decision in the instant case is opposed to the great weight of authority, and seems objectionable on grounds of policy. For a discussion of this point see COMMENTS (1916) 25 YALE LAW JOURNAL, 328; NOTES (1920) 20 COL. L. REV. 897.

MUNICIPAL CORPORATIONS—GOVERNMENTAL FUNCTIONS—COLLECTION OF GARBAGE.—The plaintiff was injured as a result of the negligent management of a city

truck used in gathering garbage, and sued the city for damages. *Held*, that the plaintiff could not recover. *James v. City of Charlotte* (1922, N. C.) 112 S. E. 423.

There is a diversity of opinion as to whether the collection of garbage and ashes and the cleaning of streets is a governmental or a corporate duty. 4 Dillon, *Municipal Corporations* (5th ed. 1911) 2899; 6 McQuillan, *Municipal Corporations* (1913) 5436. In the following cases the municipality was held liable for injuries resulting from the negligent performance of such duties. *Missano v. New York* (1899) 160 N. Y. 123, 54 N. E. 744; *Young v. Metropolitan St. Ry. Co.* (1907) 126 Mo. App. 1, 103 S. W. 135; *contra, Haley v. Boston* (1906) 191 Mass. 291, 77 N. E. 888; *Kuehn v. City of Milwaukee* (1896) 92 Wis. 263, 65 N. W. 1030. The recent tendency is to broaden the liability. *Fowler v. City of Cleveland* (1919) 100 Ohio St. 158, 126 N. E. 72; COMMENTS (1920) 29 YALE LAW JOURNAL, 911; NOTES (1920) 34 HARV. L. REV. 66.

PROPERTY—ADVERSE POSSESSION—DEFINITION OF EXCLUSIVENESS.—Although Ivy Griffin and his father cultivated certain land and divided the crops title was claimed by Ivy alone. After holding for the statutory period, Ivy granted the land to the plaintiffs, his sons, who brought an action of trespass to try title against the defendant, the record owner. *Held*, that the plaintiffs were entitled to the land. *Perry v. Griffin* (1922, Tex. Civ. App.) 241 S. W. 252.

Possession, to be adverse, must be exclusive. *Philbin v. Carr* (1920, Ind.) 129 N. E. 19; 2 Tiffany, *Real Property* (2d ed. 1920) 1929. The present case, however, very properly qualifies this statement of the rule. It is essential that the adverse possessor exclude all whose claims are equal or superior to his own. *O'Banion v. Simpson* (1920) 44 Nev. 188, 191 Pac. 1083; *Strom v. Hancock Land Co.* (1914) 70 Or. 101, 140 Pac. 458; *Woodruff v. Langford* (1908, Iowa) 115 N. W. 1020; *Wyatt v. Elam* (1857) 23 Ga. 201; Ballantine, *Claim of Title in Adverse Possession* (1919) 28 YALE LAW JOURNAL, 219; (1922) 20 MICH. L. REV. 441; (1915) 13 *ibid.* 690; (1907) 20 HARV. L. REV. 410; (1896) 10 *ibid.* 251.

PROPERTY—FIXTURES—TESTS AS TO WHEN PERSONALTY ATTACHED TO LAND BECOMES REALTY.—The plaintiff and the defendant, as joint owners of land, for a monthly rental permitted the erection by a corporation in which they were both interested of a combined fence and signboard, reserving the privilege of removal. The defendant exchanged his interest in the land for the plaintiff's interest in the corporation which erected the sign. The defendant later removed the sign, and the plaintiff brought an action for its conversion. *Held*, that the plaintiff could not recover. *Breyfogle v. Tighe* (1922, Calif. App.) 208 Pac. 1008.

Because of the rigid definition which some courts have placed upon "annexation," confusion has resulted in the law of fixtures. The better and more modern view is to interpret annexation in the light of all the surrounding circumstances. NOTES AND COMMENTS (1920) 18 MICH. L. REV. 405; NOTES (1913) 13 COL. L. REV. 247. The application of these standards varies with the relationship of the parties. As to landlord and tenant, see (1920) 29 YALE LAW JOURNAL, 930; (1921) 5 MINN. L. REV. 395; (1921) 35 HARV. L. REV. 86. As to vendor and vendee, see COMMENTS (1919) 7 CALIF. L. REV. 351; (1920) 30 YALE LAW JOURNAL, 307; (1919) 32 HARV. L. REV. 732. As to tenant and mortgagee, see NOTES (1913) 61 U. PA. L. REV. 325. A chattel annexed to the land of another by mistake may be considered personalty. (1918) 18 COL. L. REV. 367. The court in the instant case found that the parties intended the signboard to remain personalty.

QUASI-CONTRACT—RECOVERY OF MONEY PAID UNDER A MUTUAL MISTAKE OF FACT—CHANGE OF POSITION AS A DEFENSE.—The plaintiff bought an automobile from one Hughes, and paid a part of the purchase price to the defendant, who